**U.S. Department of Justice**
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Palmer-Ellington

File: A17 476 549 - New York City Date: JAN 16 1996

In re: HARTWELL AUGUSTUS PALMER-ELLINGTON a.k.a. David Palmer

IN DEPORTATION PROCEEDINGS

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APPEAL

ON BEHALF OF RESPONDENT: Reverend Robert Vitaglione
Accredited Representative
Comite Nuestra Senora de Loreto
sobre Asuntos de Inmigracion
856 Pacific Street
Brooklyn, New York 11238-3142

CHARGE:

Order: Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] - Entered without inspection

APPLICATION: Suspension of deportation

The respondent appeals from a July 21, 1995, decision in which an Immigration Judge denied his application for suspension of deportation pursuant to section 244(a)(1) of the Immigration and Nationality Act, 8 U.S.C § 1254(a)(1). The respondent's request for oral argument before the Board is denied. See 8 C.F.R. § 3.1(e). The appeal will be dismissed.

The respondent argues that the Immigration Judge erred in finding that pursuant to section 244(f) of the Act he is ineligible for suspension of deportation as an alien who entered as a crewman subsequent to June 30, 1964. We disagree.

The respondent concedes that in 1974 he was a professional seaman who was refused permission to land in the United States but nevertheless entered without inspection (Tr. at 23-24). He argues, citing our decision in Matter of Loo, 15 I&N Dec. 601 (BIA 1976), that this illegal entry is analogous to a case in which an alien crewman is admitted to the United States pursuant to a false claim of United States citizenship. In that decision we discussed cases in which an alien crewman had been admitted either as a United States citizen or a nonimmigrant, but specifically stated that we were not attempting to resolve all such issues presented by the alien crewman bars. Matter of Loo, id. at 604. We did not, for example, hold that an alien crewman who enters without inspection is not barred by section 244(f) of the Act from suspension of deportation. Rather, we held only that the preclusion of suspension of deportation for a crewman contained in section 244(f) of the Act does not apply to an individual who

initially gains admission to the United States by virtue of a judgment of a court declaring him to be a citizen, who many years after the court judgment takes up the occupation of seaman, and who effects all of his seaman entries as the citizen he has been adjudicated to be. Id.

In this case the respondent is an alien crewman who has never been admitted to the United States. Section 101(a)(10) of the Act, 8 U.S.C. § 1101(a)(10). More analogous to the respondent's situation is the discussion relied upon by the Immigration Judge found in our decision in Matter of Goncalves, 10 I&N Dec. 277, 279 (BIA 1963) (I.J. at 8). There we reasoned that it was hardly likely that Congress intended that the operation of section 244(f) of the Act would not bar from suspension of deportation an alien crewman who entered the United States illegally, that is, an alien crewman ordered detained on board his vessel who escaped into the United States. Matter of Goncalves, id. The respondent is such an alien; he deserted his ship without being permitted to land as a crewman. Cf. id. His entry into the United States was by reason of his occupation as a crewman; that is, by reason of the relatively easy access to the United States provided by that occupation. Id. Because we continue to believe that Congress intended to bar all such aliens from relief from deportation, we find that within the meaning of section 244(f) of the Act, the respondent is an alien who entered the United States as a crewman subsequent to June 30, 1964, making him ineligible for suspension of deportation under section 244(a) of the Act. See id.

The respondent argues that the enactment by Congress of section 245(i) of the Act, 8 U.S.C. § 1255(i), and the absence of a bar to alien crewman to the privilege of voluntary departure under section 244(e) of the Act argue in favor of making suspension of deportation available to alien crewmen. We do not agree. The respondent is correct that section 245(i) of the Act makes adjustment of status available to alien crewmen in certain circumstances, despite the bar to that relief found at section 245(c) of the Act. He is also correct that section 244(e) of the Act does not bar an alien crewman from the privilege of voluntary departure. However, sections 244(e) and 245(i) of the Act reflect that if Congress had intended to extend similar treatment to alien crewmen in the context of suspension of deportation, it knew how to do so. The respondent does not persuade us that we should adopt a statutory construction that reads out of the Act the alien crewmen bar found at section 244(f) of the Act because of the absence of a similar bar at sections 244(e) and 245 of the Act. See, e.g., Matter of Gomez-Giraldo, Interim Decision 3242, at 6-7 (BIA 1995); see Matter of Rainford, Interim Decision 3191, at 5 (BIA 1992).

For the foregoing reason, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure to so depart, the respondent shall be deported as provided in the Immigration Judge's order.

Lauren R. Mathon
FOR THE BOARD